IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7673 of 2007 (F)

(CRIME NO. 390/2007 OF THE NADAKKAVU POLICE STATION)
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PETITIONER/IST ACCUSED:

ABDU @ ABDU RAZAK,
S/O.KUNHI MUHAMMED, AGED 47 YEARS,
PALLIKULANGARA HOUSE, P.O.KARAPARAMBA,
KOZHIKODE.

BY ADV. SRI.SUNNY MATHEW.

RESPONDENT/ COMPLAINANT:

STATE OF KERALA, THROUGH THE SUB INSPECTOR OF POLICE, NADAKKAVU POLICE STATION, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7673 of 2007

Dated this the 13th day of December 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. He, along with his son, faces allegations for a crime registered for offence punishable under Section 326 read with 34 I.P.C. The crux of the allegations against the petitioner is that he threw a dangerous stone/weight at the de facto complainant and caused a grievous hurt to him. The alleged incident took place on the night of 17/11/2007. The victim was promptly taken to the doctor. To the doctor, the victim had made a clear narration of what had happened. Later the F.I.S was lodged and the crime was registered. Investigation is in progress. The co-accused, the son of the petitioner was granted anticipatory bail by the Sessions Court as no overt act was alleged against him. The petitioner was not granted anticipatory bail. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Even going by the version of the prosecution, there was no prior animosity or even

acquaintance between the victim and the petitioner. In the course of an incident in the market regarding a dispute on the price of the fish which the petitioner wanted to vend, this incident took place and the de facto complainant had allegedly suffered injuries. Totally false and vexatious allegations are now being raised. Initially in the F.I.R it was alleged that a weighing stone was used for commission of the offence; but later now it is alleged that a stone was taken and was thrown at the victim. The learned counsel for the petitioner further relies on Annexure A1 order in which it was submitted to the learned Sessions Judge earlier that no crime was registered. It is now seen that the crime was registered even before the date of disposal of Annexure A1.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that all the circumstances pointed out are not sufficient to justify the prayer for grant of anticipatory bail. The learned Public Prosecutor points out that the victim had made a prompt narration of the present version itself to the doctor who had examined him within hours of the incident proper. The wrong submission made on behalf of the investigating officer before the learned Sessions

Judge when the matter came up earlier for grant of anticipatory bail does not in anyway militate against the acceptability of the allegations against the petitioner raised now, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs - I have perused the case diary, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007